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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	No. 41811
)	
v.)	Ada Co. Case No.
)	CR-MD-2012-3054
COREY ALLEN THIEL,)	
)	
Defendant-Respondent.)	
_____)	

BRIEF OF RESPONDANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

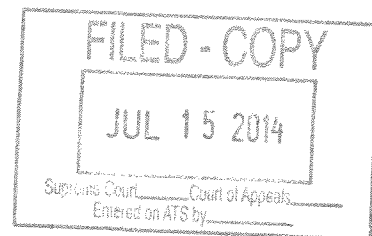
HONORABLE MICHAEL MCLAUGHLIN
District Judge

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DEFENDANT-RESPONDENT**

**ATTORNEY FOR
PLAINTIFF-APPELLANT**



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STATEMENT OF THE CASE

On March 15, 2013, the trial court revoked Mr. Thiel's probation and sentenced him to 356 days of jail, with credit for 67 days, for violating probation. Throughout his time in jail, Mr. Thiel maintained a record of good behavior.

On October 15, 2013, The Ada County Sheriff's Office submitted a letter to the court for approval of defendant's early release for good behavior pursuant to Idaho Code section 20-621. That letter stated that Mr. Thiel "had a good record and performed all assigned tasks in an orderly and peaceable manner." In that letter the Sheriff requested 55 days of early release time. This number was calculated pursuant to Idaho Code section 20-621 and would make Mr. Thiel's release date on or about November 4, 2013. But on October 23, 2013, the court denied the Sheriff's request.

On November 14, Mr. Thiel, by formal motion, requested an immediate release from jail citing the letter from the Sheriff's Office, Idaho Code section 20-621, and his performance and accomplishments while in the Ada County Jail. On November 15, the trial court denied Mr. Thiel's motion. Mr. Thiel appealed that decision, and after an expedited appeal, the district court reversed the trial court's decision. The state timely appealed.

ISSUES PRESENTED ON APPEAL

1. Can Idaho Code section 20-621 be reasonably construed to support its constitutionality?
2. Does Idaho code section 20-621 give a magistrate judge the authority to deny a sheriff's recommendation to reduce an inmate's jail sentence?

ARGUMENT

I. The district court correctly granted the sheriff's recommendation because Idaho Code section 20-621 is constitutionally sound in its direction to the sheriff and the magistrate judge.

In its argument that Idaho Code section 20-621 is unconstitutional, the state fails to recognize that the Idaho Constitution allows the legislature to establish, prescribe, and regulate courts inferior to the Supreme Court. Also, cases cited by the state miss their mark because they deal with *habeas corpus* relief from cruel and unusual punishment, a constitutional guarantee, *Mahaffey v. State*, 87 Idaho 228, 392 P.2d 279 (1964); they have been superseded by constitutional amendment, *State v. McCoy*, 94 Idaho 236, 486 P.2d 247 (1971); and they deal with local procedures instead of state statutes, *State v. Easley*, 156 Idaho 214, 322 P.2d 296 (2014). See Brief of Appellant, P. 11.

The Constitution of the State of Idaho grants the legislature the power to establish courts inferior to the Supreme Court. Idaho Const., Art. V, § 2. Consequently, the legislature is the sole authority in determining the jurisdiction of the inferior courts. *Id.*; *Acker v. Mader*, 94 Idaho 94, 481 P.2d 605 (1971). Indeed, the legislature shall “regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court,” Idaho Const., Art. V, § 13. Thus, “[a]bsent inherent power, a sentencing court has only the authority granted by the legislature.” *State v. Gill*, 150 Idaho 183, 186, 244 P.3d 1269, 1272 (Ct. App. 2010)(citing *State v. Funk*, 123 Idaho 967, 969, 855 P.2d 52, 54 (1993)). Finally, a court must “respect the reasonable exercise by the legislature of powers expressly delegated to it by the constitution of this state, and in the absence of other constitutional offense cannot interfere with it.” *AFL-CIO v. Leroy*, 110 Idaho 691, 696, 718 P.2d 1129, 1134 (1986).

Because Idaho Code section 20-621 is directed at magistrate judges, there is no separation of powers issue as claimed by the state in this case. The Constitution of the State of Idaho allows the legislature to create inferior courts and to regulate their proceedings in their exercise of power, and in Idaho Code section 20-621 the legislature did just that. This code section is a simple regulation of the lower court's proceedings in the exercise of the court's power. Since this code section constitutionally conforms with the legislature's powers, the court must respect and not interfere with the law.

The Supreme Court of the State of Idaho reviewed a similarly worded statute, which was later amended and eventually became Idaho Code section 20-621, and cited no deficiencies. *Cornell v. Mason*, 46 Idaho 112, 268 P. 8 (1928). More specifically, the Supreme Court has recognized that Idaho Code section 20-621 gives the sheriff authority to approve a reduction of sentence. *State v. Hughes*, 102 Idaho 703, 639 P.2d 1 (1981)(referring to an earlier version of the statute). The district court followed the Supreme Court's acknowledgement that the code section authorizes the sheriff to approve a reduction of sentence and that decision should be affirmed.

The state assumes that for Idaho Code section 20-621 to be constitutional it must allow the court to exercise discretion in granting or rejecting a reduction in sentence. However, there are several instances of Idaho laws taking discretion out of the hands of the sentencing judge: Idaho Code section 18-8001, Driving without Privileges, which requires a judge to impose mandatory minimums for second and third offenses; Idaho Code section 18-8004 et seq., DUI, which requires mandatory minimums for second offense and excessive alcohol concentration; Idaho Constitution Article IV section 7 allows the executive branch to commute sentences. See also *State v. Grob*, 107 Idaho 496, 690 P.2d. 951 (Ct. App. 1984)(holding no violation of

separation of powers by courts imposing mandatory sentencing law); *Doan v. State*, 132 Idaho 796, 979 P.2d 1154 (1999)(holding that fixed sentence for crime of escape did not violate separation of powers).

Since the Constitution of the State of Idaho allows such regulation of the inferior courts by the legislature there is no constitutional violation as claimed by the state in this case. Since this statute is constitutionally sound, the district court's decision to follow the sheriff's recommendation should be affirmed.

II. The district court correctly granted the sheriff's recommendation because Idaho Code section 20-621 is plainly worded and does not give the magistrate judge the authority to deny such a recommendation.

The statute in question creates a ministerial duty for the magistrates and leaves them with no authority to deny a sheriff's request for early release in these instances. According to Idaho Code section 20-621, a jail inmate *shall* be allowed time off of his or her sentence by a magistrate judge upon recommendation of the sheriff:

Every person serving a jail sentence in a county jail in the state of Idaho who has a good record as a prisoner and who performs the tasks assigned him in an orderly and peaceable manner, *shall* upon the recommendation of the sheriff be allowed five (5) days off of each and every month of his sentence, by the magistrate judge.

Emphasis added. Following constitutional direction, this statute is "plainly worded." Idaho Const., Art. III, § 17. Because this statute is plainly worded and unambiguous "it must be interpreted in accordance with its language, courts must follow it as enacted, and a reviewing court may not apply rules of construction." *State v. Wiedmeier*, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992).

The state's argument falsely relies on the terms "recommendation" and "allowed" in its attempt to persuade the court that this statute is ambiguous. That argument conveniently

overlooks the statute's controlling imperative "shall." "Shall" is an auxiliary verb that sets the tone, mood, or tense of another verb in the phrase. Here, "shall" modifies the verb phrase "be allowed" and creates an imperative, or command. The entry for "shall" in Black's Law Dictionary reads, "Has a duty to; more broadly, is required to This is the mandatory sense that drafters typically intend and that courts typically uphold." 9th Edition (1990). The state's reliance on the definition of "recommendation" is likewise tenuous because that word has several meanings, including "The act of one person in giving to another a favorable account of the character, responsibility, or skill of a third," which fits perfectly with a plain reading of the statute and thus Mr. Thiel's argument. Black's Law Dictionary, 4th Edition, (1951).¹

The Supreme Court has specifically recognized that Idaho Code section 20-621 gives the sheriff authority to approve a reduction of sentence. *State v. Hughes*, 102 Idaho 703, 639 P.2d 1 (1981)(referring to an earlier version of the statute). In that case, the Court held that, according to Idaho Code section 20-621, sentences such as Mr. Thiel's are "subject to the authority of the sheriff and prosecuting attorney to approve not more than five (5) days per month reduction for good time." *Id.* Later, by amendment, the legislature removed "prosecuting attorney" from the statute authorizing the sheriff alone to approve good time releases.

This statute thus creates a ministerial duty for the court. A ministerial duty is "[o]ne regarding which nothing is left to discretion—a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist." *Ausman v. State*, 124 Idaho 839, 842, 864 P.2d 1126, 1129 (1993)(quoting Black's Law Dictionary, 6th edition (1990)). When a statute or

¹ Other definitions of the term "recommend" exist in other editions of Black's Law Dictionary; however, this term is completely omitted from recent editions (9th and 10th) of Black's Law Dictionary.

rule is “clear, specific, and mandatory with respect to what a judge must do This is a ministerial act as opposed to a discretionary or judicial one.” *Id.* at 842–843, 1129–1130.

The language of Idaho Code section 20-621 is clear and precise. It creates a ministerial duty for the court. This statute, in plain language, allows a sheriff to recommend time off of a jail inmate’s sentence and mandates that a magistrate judge *shall* allow it. In Mr. Thiel’s case, the letter from the Ada County Sheriff’s Office dated October 15, 2013, specifically states that Mr. Thiel “had a good record and performed all assigned tasks in an orderly and peaceable manner.” The trial court should have fulfilled its ministerial duty under the statute and approved the Sheriff’s recommendation. Acting outside the parameters of the statute, the magistrate judge denied the Ada County Sheriff’s recommendation. The district court was correct to reverse the magistrate judge’s denial. The district court’s decision should be affirmed.

III. This Court should uphold the constitutionality of Idaho Code section 20-621 and recognize the ministerial duty of the magistrate courts in this matter because this promotes safety and order in our county jails.

Under Idaho Code section 20-621, inmates in county jails can expect a specific reduction to their sentence if they maintain a good record as a prisoner and perform their assigned tasks in an orderly and peaceable manner. This statute incentivizes good behavior in the jail. For example, a jail inmate will follow the rules and seek to avoid in-jail write-ups in order to obtain a specific reduction to their sentence. Such order and peace within a jail promotes safety for jail staff and inmates.

Understanding that the sheriff, who oversees the county jail, would be in the best position to make the good behavior determination, the legislature granted the sheriff commutation authority. Leaving this authority in the hands of the sheriff promotes trust and confidence

between jail staff and inmates. This, consequently, produces safer jails for staff and inmates. This Court should uphold the constitutionality of Idaho Code section 20-621 and recognize the authority of the sheriff in this matter because this promotes safety and order in our county jails.

CONCLUSION

Because Idaho Code section 20-621 is constitutionally sound and plainly worded, the trial court should have followed the language of the statute and approved the sheriff's recommendation concerning Mr. Thiel. The district court correctly reversed that decision, and Mr. Thiel now requests that this Court affirm the district court's decision. A decision in Mr. Thiel's favor will promote safety and order in our county jails.

DATED this 15th day of July, 2014.



DYLAN J. ORTON
Attorney for Defendant

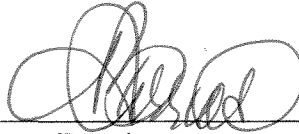
CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 15th day of July 2014, I caused to be served a true and correct copy of the foregoing document in the above-captioned matter to:

MICHAEL MCLAUGHLIN
DISTRICT COURT JUDGE

MARK W. OLSON
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.

A handwritten signature in dark ink, appearing to read 'Irene Barrios', is written over a horizontal line.

Irene Barrios
Legal Assistant